## UNITED STATES OF AMERICA

## **BEFORE THE**

## NATIONAL LABOR RELATIONS BOARD

In the Matter of: Case No.: 12-CA-076395

A/C SPECIALISTS, INC.,

Respondent,

And

UNITED ASSOCIATION OF PLUMBERS PIPEFITTERS & HVAC REFRIGERATION MECHANICS, LOCAL UNION 123, UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA, AFL-CIO,

**Charging Party.** 

CHARGING PARTY UNITED ASSOCIATION LOCAL UNION 123 CROSS EXCEPTIONS TO THE DECISION OF THE ADMINISTRATIVE LAW JUDGE

Charging Party United Association of Plumbers, Pipefitters & HVAC Refrigeration Mechanics, Local Union 123, United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, AFL-CIO (UA), by and through its undersigned counsel and pursuant to Section 102.46(e) of the Rules and Regulations of the National Labor Relations Board, hereby submits its cross-exceptions to the decision of the Administrative Law Judge (ALJ) in the above referenced matter. The ALJ's decision was issued on October 12, 2012. Exceptions were filed by the Respondent on November 9, 2012. Specifically, the United Association cross excepts to the following:

- 1. The ALJ erred by not finding that both Tim Winston and David Winston were supervisors within the meaning of Section 2(11) of the Act. *See* ALJD2:16-18 where the ALJ notes that Tim Winston is the owner and that David Winston was the former owner and continued to be involved in the operations of the company;
- 2. The ALJ erred by concluding that Respondent did not unlawfully interrogate employees about their union activities and support in violation of Section 8(a)(1) of the Act when David Winston a 2(11) supervisor asked employee Michael Noel about his contact with the Union and why he contacted the Union. ALJD5:51-6:5; 8:26-29;
- 3. The ALJ erred by concluding that Respondent did not unlawfully interrogate employees about their union activities and sympathies in violation of Section 8(a)(1) of the Act when Timothy Winston, the owner and a Section 2(11) supervisor, asked employee Michael Noel about the Union and why he had joined the Union. ALJD6:22-33; 8:26-29;
- 4. The ALJ erred by failing to include in his recommended remedy order, and notice to employees pursuant to remedy Respondent's unlawful interrogation of the employees. ALJD11-12 Appendix;

- 5. The ALJ erred by failing to find that Tim Winston violated Section 8(a)(11) of the Act by calling James Stahl a "treasonous motherfucker" and to see him face-to-face when he turns in his vehicle to see what happens. ALJD6:22-52;
- 6. The ALJ erred by concluding that Respondent did not threaten to discharge employees because of their union activities in violation of Section 8(a)(1) of the Act when Timothy Winston told technicians Gordon and Noel that they could thank Stahl "for getting you guys fired." ALJD7:7-16; 9:4-14;
- 7. The ALJ erred by failing to find that David Winston stated to employees Gordon, Noel and Stahl, "good luck finding a union job in this town. If you want to find a union job, you're not going to find it here. (Tr. 154-155);
- 8. The ALJ erred by failing to cite the unlawful threats of discharge and interrogations described in cross exceptions 2-7 as further grounds for the imposition of a Gissell bargaining order remedy. ALJD9:50 to 11-20; ALJD 12:19-28 Appendix.
- 9. The ALJ erred by the issuance of a narrow cease and desist order. ALJ Dec. p. 12, lines 1 and 2;
- 10. The ALJ erred by failing to issue a broad cease and desist order requiring that the Respondent shall cease and desist from violating the Act "in any other manner." ALJ Dec. p. 12, lines 1 and 2;
- 11. The ALJ erred by failing to include in the notice provision of the order set forth in ALJ Dec. p. 12, lines 37-47 and p. 13, lines 1 and 2, to the extent that the ALJ's notice provisions of the recommended order do not require a responsible management representative to read the notice to employees in both English and Spanish upon request who are assembled for that purpose in the presence of a Board agent or alternatively have the notice read in English and Spanish by a Board agent in the presence of its employees who are assembled for that purpose in the presence of a responsible management representative.

## Respectfully submitted,

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Brian A. Powers O'DONOGHUE & O'DONOGHUE LLP 4748 Wisconsin Avenue, NW Washington, D.C. 20016 Phone: (202) 362-0041

**Counsel for Charging Party** 

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